



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1049

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

70 ILCS 2605/19b new

705 ILCS 505/8

705 ILCS 505/24

from Ch. 37, par. 439.8

from Ch. 37, par. 439.24

Amends the Metropolitan Water Reclamation District Act. Adds a Section providing that every district organized under the Act shall be liable to owners of residential property within the district that has been damaged by flooding caused by the district's performance of its duties. Provides that the property owner or owners must notify the district trustees of his or her intent to file a claim and attach an affidavit to any claim filed, and describes the required contents of the affidavit. Provides that in the event of a judgment against the district, the damage award shall not exceed \$100,000. Provides that the property owner or owners may be awarded attorneys fees if notification requirements are met. Amends the Court of Claims Act. Provides jurisdiction to the Court of Claims over certain claims authorized under the Metropolitan Water Reclamation District Act. In a Section regarding payment of awards, provides that no funds may be appropriated by the General Assembly for the payment of claims permissible under the Metropolitan Water Reclamation District Act. Effective immediately.

LRB098 05550 OMW 35587 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Metropolitan Water Reclamation District Act
5 is amended by adding Section 19b as follows:

6 (70 ILCS 2605/19b new)

7 Sec. 19b. Liability for flooding.

8 (a) Every sanitary district organized under this Act shall
9 be liable to the owner or owners of residential real estate
10 within the district that has been damaged by overflowing water
11 or otherwise damaged by flooding caused by the district's
12 performance of its duties under this Act on or after the
13 effective date of this amendatory Act of the 98th General
14 Assembly.

15 (b) The owner or owners of the residential property must
16 notify one or more trustees of the district, in writing, 60
17 days before filing a claim stating that he or she claims
18 damages in the amount of dollars by reason of (here insert
19 the cause of damage) and intends to sue for the same.

20 (c) Actions to recover damages under this Section shall be
21 brought before the Court of Claims under Section 8(j) of the
22 Court of Claims Act. To bring any action seeking damages under
23 this Section, the plaintiff shall file an affidavit attached to

1 the original and all copies of the complaint, declaring that
2 the affiant has consulted a plumber licensed under the Illinois
3 Plumbing License Law and that the plumber: (1) is qualified by
4 experience or demonstrated competence in the subject of the
5 case; (2) is knowledgeable in the relevant issues involved in
6 the particular action and has assessed the actual damage caused
7 to the real estate by flooding; and (3) concludes that, upon
8 review of the damage and relevant facts, that there is a
9 reasonable and meritorious cause for the filing of such action
10 against the district.

11 (d) The affidavit shall state that the affiant reasonably
12 relied upon the conclusions and expertise of the plumber in
13 filing the claim against the district. The affidavit shall also
14 include the name, address, and license number of the plumber.

15 (e) Allegations and denials in the affidavit made without
16 reasonable cause and found to be untrue shall subject the party
17 pleading them, or his or her attorney, or both, to the payment
18 of reasonable expenses actually incurred by the other party by
19 reason of the untrue pleading, together with reasonable
20 attorneys' fees to be summarily taxed by the court upon motion
21 made within 30 days of the judgment or dismissal.

22 (f) If judgment is rendered against the district for
23 damages, the award shall not exceed the sum of \$100,000 to or
24 for the benefit of any claimant. The plaintiff shall also
25 recover his or her reasonable attorneys' fees to be taxed as
26 costs of suit provided that the plaintiff notified the trustees

1 of the district in the manner prescribed by this Section and
2 the amount recovered shall be larger than the amount offered by
3 said trustees (if anything) as a compromise for damages
4 sustained.

5 Section 10. The Court of Claims Act is amended by changing
6 Sections 8 and 24 as follows:

7 (705 ILCS 505/8) (from Ch. 37, par. 439.8)

8 Sec. 8. Court of Claims jurisdiction; deliberation
9 periods. The court shall have exclusive jurisdiction to hear
10 and determine the following matters:

11 (a) All claims against the State founded upon any law of
12 the State of Illinois or upon any regulation adopted thereunder
13 by an executive or administrative officer or agency; provided,
14 however, the court shall not have jurisdiction (i) to hear or
15 determine claims arising under the Workers' Compensation Act or
16 the Workers' Occupational Diseases Act, or claims for expenses
17 in civil litigation, or (ii) to review administrative decisions
18 for which a statute provides that review shall be in the
19 circuit or appellate court.

20 (b) All claims against the State founded upon any contract
21 entered into with the State of Illinois.

22 (c) All claims against the State for time unjustly served
23 in prisons of this State when the person imprisoned received a
24 pardon from the governor stating that such pardon is issued on

1 the ground of innocence of the crime for which he or she was
2 imprisoned or he or she received a certificate of innocence
3 from the Circuit Court as provided in Section 2-702 of the Code
4 of Civil Procedure; provided, the amount of the award is at the
5 discretion of the court; and provided, the court shall make no
6 award in excess of the following amounts: for imprisonment of 5
7 years or less, not more than \$85,350; for imprisonment of 14
8 years or less but over 5 years, not more than \$170,000; for
9 imprisonment of over 14 years, not more than \$199,150; and
10 provided further, the court shall fix attorney's fees not to
11 exceed 25% of the award granted. On or after the effective date
12 of this amendatory Act of the 95th General Assembly, the court
13 shall annually adjust the maximum awards authorized by this
14 subsection (c) to reflect the increase, if any, in the Consumer
15 Price Index For All Urban Consumers for the previous calendar
16 year, as determined by the United States Department of Labor,
17 except that no annual increment may exceed 5%. For the annual
18 adjustments, if the Consumer Price Index decreases during a
19 calendar year, there shall be no adjustment for that calendar
20 year. The transmission by the Prisoner Review Board or the
21 clerk of the circuit court of the information described in
22 Section 11(b) to the clerk of the Court of Claims is conclusive
23 evidence of the validity of the claim. The changes made by this
24 amendatory Act of the 95th General Assembly apply to all claims
25 pending on or filed on or after the effective date.

26 (d) All claims against the State for damages in cases

1 sounding in tort, if a like cause of action would lie against a
2 private person or corporation in a civil suit, and all like
3 claims sounding in tort against the Medical Center Commission,
4 the Board of Trustees of the University of Illinois, the Board
5 of Trustees of Southern Illinois University, the Board of
6 Trustees of Chicago State University, the Board of Trustees of
7 Eastern Illinois University, the Board of Trustees of Governors
8 State University, the Board of Trustees of Illinois State
9 University, the Board of Trustees of Northeastern Illinois
10 University, the Board of Trustees of Northern Illinois
11 University, the Board of Trustees of Western Illinois
12 University, or the Board of Trustees of the Illinois
13 Mathematics and Science Academy; provided, that an award for
14 damages in a case sounding in tort, other than certain cases
15 involving the operation of a State vehicle described in this
16 paragraph, shall not exceed the sum of \$100,000 to or for the
17 benefit of any claimant. The \$100,000 limit prescribed by this
18 Section does not apply to an award of damages in any case
19 sounding in tort arising out of the operation by a State
20 employee of a vehicle owned, leased or controlled by the State.
21 The defense that the State or the Medical Center Commission or
22 the Board of Trustees of the University of Illinois, the Board
23 of Trustees of Southern Illinois University, the Board of
24 Trustees of Chicago State University, the Board of Trustees of
25 Eastern Illinois University, the Board of Trustees of Governors
26 State University, the Board of Trustees of Illinois State

1 University, the Board of Trustees of Northeastern Illinois
2 University, the Board of Trustees of Northern Illinois
3 University, the Board of Trustees of Western Illinois
4 University, or the Board of Trustees of the Illinois
5 Mathematics and Science Academy is not liable for the
6 negligence of its officers, agents, and employees in the course
7 of their employment is not applicable to the hearing and
8 determination of such claims.

9 (e) All claims for recoupment made by the State of Illinois
10 against any claimant.

11 (f) All claims pursuant to the Line of Duty Compensation
12 Act. A claim under that Act must be heard and determined within
13 one year after the application for that claim is filed with the
14 Court as provided in that Act.

15 (g) All claims filed pursuant to the Crime Victims
16 Compensation Act.

17 (h) All claims pursuant to the Illinois National
18 Guardsman's Compensation Act. A claim under that Act must be
19 heard and determined within one year after the application for
20 that claim is filed with the Court as provided in that Act.

21 (i) All claims authorized by subsection (a) of Section
22 10-55 of the Illinois Administrative Procedure Act for the
23 expenses incurred by a party in a contested case on the
24 administrative level.

25 (j) All claims authorized by Section 19(b) of the
26 Metropolitan Water Reclamation District Act. An award for

1 damages thereunder shall not exceed the sum of \$100,000 to or
2 for the benefit of any claimant. The defense that the
3 Metropolitan Water Reclamation District is not liable for the
4 negligence of its officers, agents, and employees in the course
5 of their employment is not applicable to the hearing and
6 determination of such claims.

7 (Source: P.A. 95-970, eff. 9-22-08; 96-80, eff. 7-27-09.)

8 (705 ILCS 505/24) (from Ch. 37, par. 439.24)

9 Sec. 24. Payment of awards.

10 (1) From funds appropriated by the General Assembly for the
11 purposes of this Section the Court may direct immediate payment
12 of:

13 (a) All claims arising solely as a result of the
14 lapsing of an appropriation out of which the obligation
15 could have been paid.

16 (b) All claims pursuant to the Line of Duty
17 Compensation Act.

18 (c) All claims pursuant to the "Illinois National
19 Guardsman's and Naval Militiaman's Compensation Act",
20 approved August 12, 1971, as amended.

21 (d) All claims pursuant to the "Crime Victims
22 Compensation Act", approved August 23, 1973, as amended.

23 (e) All other claims wherein the amount of the award of
24 the Court is less than \$5,000.

25 (2) The court may, from funds specifically appropriated

1 from the General Revenue Fund for this purpose, direct the
2 payment of awards less than \$50,000 solely as a result of the
3 lapsing of an appropriation originally made from any fund held
4 by the State Treasurer. For any such award paid from the
5 General Revenue Fund, the court shall thereafter seek an
6 appropriation from the fund from which the liability originally
7 accrued in reimbursement of the General Revenue Fund.

8 (3) In directing payment of a claim pursuant to the Line of
9 Duty Compensation Act, the Court must direct the Comptroller to
10 add an interest penalty if payment of a claim is not made
11 within 6 months after a claim is filed in accordance with
12 Section 3 of the Line of Duty Compensation Act and all
13 information has been submitted as required under Section 4 of
14 the Line of Duty Compensation Act. If payment is not issued
15 within the 6-month period, an interest penalty of 1% of the
16 amount of the award shall be added for each month or fraction
17 thereof after the end of the 6-month period, until final
18 payment is made. This interest penalty shall be added
19 regardless of whether the payment is not issued within the
20 6-month period because of the appropriation process, the
21 consideration of the matter by the Court, or any other reason.

22 (3.5) The interest penalty payment provided for in
23 subsection (3) shall be added to all claims for which benefits
24 were not paid as of the effective date of P.A. 95-928. The
25 interest penalty shall be calculated starting from the
26 effective date of P.A. 95-928, provided that the effective date

1 of P.A. 95-928 is at least 6 months after the date on which the
2 claim was filed in accordance with Section 3 of the Line of
3 Duty Compensation Act. In the event that the date 6 months
4 after the date on which the claim was filed is later than the
5 effective date of P.A. 95-928, the Court shall calculate the
6 interest payment penalty starting from the date 6 months after
7 the date on which the claim was filed in accordance with
8 Section 3 of the Line of Duty Compensation Act. This subsection
9 (3.5) of this amendatory Act of the 96th General Assembly is
10 declarative of existing law.

11 (3.6) In addition to the interest payments provided for in
12 subsections (3) and (3.5), the Court shall direct the
13 Comptroller to add a "catch-up" payment to the claims of
14 eligible claimants. For the purposes of this subsection (3.6),
15 an "eligible claimant" is a claimant whose claim is not paid in
16 the year in which it was filed. For purposes of this subsection
17 (3.6), "'catch-up' payment" is defined as the difference
18 between the amount paid to claimants whose claims were filed in
19 the year in which the eligible claimant's claim is paid and the
20 amount paid to claimants whose claims were filed in the year in
21 which the eligible claimant filed his or her claim. The
22 "catch-up" payment is payable simultaneously with the claim
23 award.

24 (4) From funds appropriated by the General Assembly for the
25 purposes of paying claims under paragraph (c) of Section 8, the
26 court must direct payment of each claim and the payment must be

1 received by the claimant within 60 days after the date that the
2 funds are appropriated for that purpose.

3 (5) Notwithstanding, no funds may be appropriated by the
4 General Assembly for the payment of claims under Section 8(j)
5 of this Act.

6 (Source: P.A. 95-928, eff. 8-26-08; 95-970, eff. 9-22-08;
7 96-328, eff. 8-11-09; 96-539, eff. 1-1-10.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.